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Paper No. 7

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In re Application of  
KERRY VEENSTRA ET AL  
Application No. 09/531,862  
Filed: March 21, 2000  
Attorney Docket No. 9818-026-999

OFFICE OF PETITIONS  
A/C PATENTS  
DECISION ON PETITION  
REFUSING RULE 47(a) STATUS

This is in response to the petition under 37 CFR 1.47(a), filed September 22, 2000.

The petition is dismissed.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

*FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.* Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed on March 21, 2000 without an executed oath or declaration and naming Veenstra, Rangasayee and Bielby as joint inventors.

Accordingly, on May 22, 2000, a "Notice to File Missing Parts of Application" was mailed, requiring an executed oath or declaration and a surcharge for its late filing.

In response, on September 22, 2000, a two month extension of time and fee of \$380; a \$130 surcharge fee; Declaration signed by inventors Veenstra and Bielby, but not by joint inventor Rangasayee; the instant petition under 37 CFR 1.47(a) and \$130 fee; and a declaration by William S. Galliani in support of the 37 CFR 1.47(a) petition were received.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. Applicant lacks item (1) set forth above.

Petitioner states joint inventor Rangasayee cannot be located to execute the application papers and that he has been informed that Mr. Rangasayee no longer works at Altera Corporation where he was employed at the time the invention was conceived with joint inventors Veenstra and Bielby. Although an attempt is stated to have been made by Mr. James Wu, a patent attorney employed by Altera Corporation, to mail the patent application documents to inventor Rangasayee at his last known address, these documents were returned as undeliverable. A copy of the evidence of this attempt accompanies the petition as Exhibit B. Thereafter, an attempt was made to contact inventor Rangasayee at his last known telephone number and was informed that the telephone for that number was disconnected. Additionally, directory assistance did not identify a listing for inventor Rangasayee and that an Internet search was also unsuccessful.

Petitioner has failed to show or provide adequate proof that a diligent effort was made to reach or locate inventor Rangasayee. The applicable statute (35 USC 116) requires that a "diligent effort" have been expended in attempting to find or reach the nonsigning inventor. See MPEP 409.03(a). The record currently fails to demonstrate, with a documented showing, that a diligent effort was made to find or locate the nonsigning inventor, such that the declaration can be accepted under 37 CFR 1.47.

Where inability to find or locate a named inventor is alleged, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a *diligent effort* was made to locate the inventor. The statement(s) of fact must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Although the evidence is supportive of the fact that the application papers were returned from the last known address as undeliverable, petitioner has not demonstrated that all efforts have been expended in attempting to locate inventor Rangasayee. In this regard, a statement has been made that an Internet search was made but was unsuccessful. However, petitioner has not presented a copy the result of the Internet search. A brief search on the Internet Whitepages.com revealed that a search for the name "Rangasayee" indicated that a "Krishan Rangasayee" (the first name differs from the current spelling of the inventor's name) was located in Sunnyvale, CA at telephone number (650) 938-4363. Therefore, petitioner should attempt to ascertain whether this is the same person named as a joint inventor in the instant application. Additionally, petitioner should indicate whether access is available to the personnel records of Altera Corporation and, if so, what does inspection of the records reveal as to a current, forwarding, or nearest living relative, or permanent address? What does inspection of the phone

directories for those address locations reveal? Did any of Mr. Rangasayee's coworkers keep in touch with him? If so, do they know the current address of Mr. Rangasayee? Copies and/or statements of the results of the search must be referred to in any renewed petition. See MPEP 409.03(d). If inventor Rangasayee is located, then a copy of the transmittal letter itemizing the complete application papers, as well as a copy of the proof of service on inventor Rangasayee will be required. If the papers are returned as undeliverable and no forwarding address is available, if the Internet search at the above location and phone number is unsuccessful, and if efforts to locate the inventor through personnel records or coworkers of Altera Corporation fail, then petitioner will have established that inventor Rangasayee cannot be located to join in the application.

In order to expedite consideration, petitioner may wish to submit the renewed petition under 37 CFR 1.47(a) by facsimile transmission to the telephone number indicated below and to the attention of the undersigned.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents  
Box DAC  
Washington, D.C. 20231

By FAX: (703) 308-6916  
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23  
2201 S. Clark Place  
Arlington, VA

Telephone inquiries related to this decision should be directed to the undersigned at (703) 305-8680.

*Frances Hicks*  
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Petitions Examiner  
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Office of the Deputy Commissioner  
for Patent Examination Policy